

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICKY KURT WASSENAAR,

Plaintiff,

vs.

No. CV 18-00990 JCH/KK

CENTURION CORRECTIONAL HEALTHCARE
OF NEW MEXICO, LLC, KEVIN DANIEL LEE, M.D.,
and JOSE BEN MARTINEZ, P.A.,

Defendants.

MEMORANDUM OPINION AND ORDER REMANDING CASE

THIS MATTER is before the Court *sua sponte* on the Notice of Removal filed by Defendants Centurion Correctional Healthcare of New Mexico, LLC, and Jose Ben Martinez, P.A., on October 23, 2018. (Doc. 1). The case has been improperly removed from state to federal court and the Court will order it remanded to the First Judicial District Court, County of Santa Fe, State of New Mexico.

Plaintiff Ricky Kurt Wassenaar originally filed this action in the First Judicial District Court, County of Santa Fe, State of New Mexico, on February 23, 2018. The case was docketed as First Judicial District cause no. D-101-CV-2018-00604. (Doc. 1-2 at 1). Defendants Centurion and Martinez removed the case to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. (Doc. 1 at 1).

1). The Notice of Removal states:

“This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) based on diversity of citizenship, as Centurion and Mr. Martinez are citizens of New Mexico and Plaintiff is a citizen of Arizona . . .”

(Doc. 1 at 3, ¶ 11).

Section 1441(a) states:

“[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the District Court of the United States for the district and division embracing the place where such action is pending.”

28 U.S.C. § 1441(a). Section 1441 further provides:

“A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title ***may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.***”

28 U.S.C. § 1441(b)(2) (emphasis added). The Notice of Removal expressly states that this case is removed solely on the basis of diversity of citizenship jurisdiction under 28 U.S.C. § 1332(a). (Doc. 1 at 3, ¶ 11). The Notice of Removal also specifically avers that both removing defendants are citizens of New Mexico—the State in which such action is brought. (Doc. 1 at 3, ¶ 11). This case has been improvidently removed in violation of the provisions of 28 U.S.C. § 1441(b)(2) and will be remanded to State court. *Brazell v. Waite*, 525 F. App’x. 878, 884 (10th Cir.2013).

IT IS ORDERED that this case is **REMANDED** to the First Judicial District Court, County of Santa Fe, State of New Mexico.



UNITED STATES DISTRICT JUDGE